STATE OF MICHIGAN

COURT OF APPEALS

JACK ROBINSON, Plaintiff-Appellant,	UNPUBLISHED March 15, 2011
v	No. 295572 Wayne Circuit Court
FRANK MCCUE, MARGARET MCCUE, FAIRLANE WOODS COUNTRY TOWNHOMES CONDOMINIUM and THERESA ROMAN, Defendants-Appellees.	LC No. 08-113219-CZ

Before: MURPHY, C.J., AND STEPHENS AND M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants. We affirm.

Since 1994, plaintiff has owned a condominium unit within the Fairlane Woods Country Townhomes Condominium (Fairlane Woods) community. Plaintiff's unit is between that of defendants, Frank McCue and Margaret McCue (the McCues) and Theresa Roman. Approximately 15 to 20 feet behind the parties' units is a woodland area owned by Ford Motor Company (Ford) (hereinafter referred to as "the Ford Preserve"). In 1978, the Wayne Circuit Court entered a permanent injunction that prohibited the development or construction of the Ford Preserve. In 1988, the Ford Preserve was included as part of condominium development, under the control of the developer as a community area, and beginning in 1994, the Ford Preserve became a general common element, under the control of the condominium association. Since 1994, plaintiff has been upset by the various vegetation plantings and removals conducted by the McCues and Roman on the perimeter of and within the Ford Preserve. Ultimately, plaintiff filed suit against defendants in an effort to prohibit them from gardening on the perimeter of and within the Ford Preserve.

On appeal, plaintiff argues the trial court erred determining plaintiff lacked standing to bring a public nuisance claim. We disagree. Although the trial court did not specify whether it granted the motions for summary disposition pursuant to MCR 2.116(C)(8) or MCR 2.116(C)(10), because the parties submitted evidence that the trial court reviewed in making its decision, we will review this case pursuant to MCR 2.116(C)(10). MCR 2.116(G)(5);[1] *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). This Court reviews the grant or denial of a motion for summary disposition under MCR 2.116(C)(10) de novo. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). A motion brought under MCR 2.116(C)(10) is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Additionally, this Court considers only that evidence which was properly presented to the trial court in deciding the motion. *Pena v Ingham County Rd Comm'n*, 255 Mich App 299, 310; 660 NW2d 351 (2003). Summary disposition is proper if there is "no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham*, 480 Mich at 111. "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgmt*, 481 Mich 419, 425; 751 NW2d 8 (2008). "Whether a party has standing is a question of law that we review de novo." *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004), overruled on other grounds *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010).

The Michigan Supreme Court recently determined that the "Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's longstanding historical approach to standing." *Lansing Sch*, 487 Mich at 372, overruling *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726; 629 NW2d 900 (2001). Consistent with this statement, it held that:

> a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in

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[1] MCR 2.116(G)(5) provides:

> [t]he affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).

> a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id*.]

A cause of action is "[a] group of operative facts giving rise to one or more bases for suing" or "a factual situation that entitles one person to obtain a remedy in court from another person[.]" Black's Law Dictionary (9th ed). A private citizen may have a legal cause of action to file a public nuisance claim against another party "where the [private citizen] can show he suffered a type of harm different from that of the general public." *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995).

Plaintiff alleged that defendants' actions, including planting and removing vegetation within the Ford Preserve, prevented his use and enjoyment of the Ford Preserve. Plaintiff has failed to show "a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large…." *Lansing Sch*, 487 Mich at 372. Plaintiff failed to offer evidence highlighting how defendants' planting actions at the perimeter of and within the Ford Preserve gave plaintiff a special injury or right that would be detrimentally affected in a manner different from that of the general public. Plaintiff has also failed to show how he has a substantial interest in the Ford Preserve that will be detrimentally affected in a manner different from the general public. Plaintiff's position regarding the Ford Preserve is no different from any other member of the general public because he is not the owner of the Ford Preserve, nor does his living in close proximity to the Ford Preserve intrinsically give him a substantial interest in the Ford Preserve. The trial court correctly determined that plaintiff lacked standing to bring the public nuisance claim.

Additionally, a review of the Declaration, the Amended Master Deed, and the Amended Bylaws reveals that plaintiff's position as a co-owner of a Fairlane Woods condominium does not confer upon plaintiff derivative standing because the Ford Preserve is a community area and a general common element. As such, it is the condominium association that is responsible for the maintenance, decoration, repair, and replacement of the Ford Preserve. Thus, plaintiff, as a condominium owner, does not suffer from a different type of harm than that of the general public. Plaintiff does not have a legal cause of action and, therefore, he does not have standing to bring his public nuisance claim.

Finally, the 1978 Final Judgment also fails to provide plaintiff standing to bring a public nuisance claim because plaintiff was not a party to the 1978 Final Judgment, and thus, he does not suffer from a different type of harm than that of the general public. The trial court correctly found that plaintiff lacked standing to bring a public nuisance claim.

Plaintiff also argues that he pled a cause of action under the Michigan Environmental Protection Act (MEPA) within his complaint, thus, he has environmental standing to bring a MEPA cause of action. We disagree.

"[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). According to MCR 2.111(B)(1), a complaint must contain "[a] statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary

reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" Courts look beyond the face of the plaintiff's pleadings to determine the gravamen or gist of the cause of action contained in the complaint when considering a motion for summary disposition. *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 159; 677 NW2d 874 (2003). A statement of plaintiff's conclusions, unsupported by allegations of fact, does not suffice to state a cause of action. *Capitol Props Group, LLC v 1247 Ctr Street, LLC*, 283 Mich App 422, 426; 770 NW2d 105 (2009).

Plaintiff's complaint asserts that he believed the Ford Preserve to be under the protection of the MEPA and that certain unnamed provisions of the MEPA required persons to obtain permits before altering protected lands. These general statements regarding the MEPA failed to put defendants on notice that plaintiff was alleging a claim under the MEPA. Plaintiff's complaint also failed to inform defendants regarding the nature of the MEPA claim, and the complaint did not allow defendants to take a responsive position because plaintiff did not allege that defendants violated a statutory provision of the MEPA. Therefore, plaintiff failed to plead a cause of action under the MEPA, and thus, he cannot seek environmental standing under the MEPA.

Plaintiff also argues that there is a genuine issue of material fact regarding his public nuisance claim. Because we find plaintiff did not have standing to bring the public nuisance claim, we find this issue moot and decline to address it. *Clinton Twp v Mt Clemens*, 171 Mich App 288, 291-292; 429 NW2d 656 (1988) ("An issue is moot when an event occurs which renders it impossible for the reviewing court to grant relief."); *Sch Dist of East Grand Rapids v Kent Co Tax Allocation Bd*, 415 Mich 381, 390; 330 NW2d 7 (1982) ("[A]s a general rule, this Court will not entertain moot issues or decide moot cases.").

Next, plaintiff argues the trial court erred in denying his motion to extend discovery and adjourn case evaluation. We disagree. A trial court's decision to grant or deny discovery is reviewed for an abuse of discretion. *Mercy Mt Clemens Corp v Auto Club Ins Ass'n*, 219 Mich App 46, 50-51; 555 NW2d 871 (1996). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

Generally, summary disposition is premature if granted before discovery on a disputed issue is complete. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). However, summary disposition is proper if further discovery does not present a fair likelihood of uncovering factual support for the opposing party's position. *Liparoto Constr Co v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW2d 801 (2009).

The trial court properly denied plaintiff's motion to extend discovery and adjourn case evaluation without prejudice pending the outcome of defendants' motions for summary disposition. The record reveals that both parties had ample time to conduct discovery before the filing of the motions for summary disposition. Additionally, plaintiff produced numerous photographs and other documents that the trial court considered in granting defendants' motions for summary disposition. Thus, the trial court did not abuse its discretion because it is unlikely that additional discovery would have provided plaintiff with additional factual support.

Finally, plaintiff argues that there are genuine issues of material fact regarding his tortious intrusion and trespass claims. We disagree. Tortious intrusion is not a recognized tort in Michigan, and thus, plaintiff failed to plead a valid claim upon which relief can be granted. MCR 2.116(C)(8). Furthermore, plaintiff's argument that his count of tortious intrusion was meant to encompass the tort of private nuisance or any other tort that future discovery would support is without merit. As previously discussed, pursuant to MCR 2.111(B)(1), a party must allege, within the complaint, "specific allegations necessary [to] reasonably … inform the adverse party of the nature of the claims the adverse party is called on to defend[.]" Thus, if a party merely alleges conclusions in the complaint, without factual support, it has failed to state a cause of action. *Capitol Props*, 283 Mich App at 426. Plaintiff failed to plead allegations regarding private nuisance or any other tort with sufficient specificity to put defendants on notice of the nature of the claims, and thus, plaintiff cannot pursue these claims.

Regarding whether the trial court properly granted summary disposition on plaintiff's trespass claim, "[r]ecovery for trespass to land in Michigan is available only upon proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession." *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 67; 602 NW2d 215 (1999). Plaintiff asserted that Roman's backyard lights intrude into his condominium unit each night. However, light does not qualify as a physical, tangible object. See *id*. at 69 ("we agree with those authorities that have recognized, for practical purposes, that dust, along with other forms of airborne particulate, does not normally present itself as a significant physical intrusion"). Because light is not a physical, tangible object, the record provided fails to raise a question of fact regarding whether Roman trespassed onto plaintiff's property. Consequently, summary disposition was properly granted.

Affirmed.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly